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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter of	
IMPLEMENTATION OF THE LOCAL COMPETITION PROVISIONS IN THE TELECOMMUNICATIONS ACT OF 1996	**CC Docket No. 96-98**

FURTHER COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

TELECOMMUNICATIONS RESELLERS ASSOCIATION

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SUMMARY

The Telecommunications Resellers Association ("TRA"), an organization consisting of more than 450 resale carriers and their underlying product and service suppliers, recommends that the Commission take the following further actions in the captioned rulemaking proceeding:

- The Commission should interpret broadly the dialing parity requirement embodied in Section 251(b)(3) of the '96 Act, adopting and imposing in so doing uniform, federal rules that mandate the use and expeditious deployment of a "multi-PIC" or "smart-PIC" presubscription methodology, in conjunction with customer notification, education and balloting funded by the LECs. TRA endorses the Commission's strict interpretation of "nondiscriminatory access" as it applies to telephone numbers, operator services and directory assistance and directory listings, and submits that the availability of these services for resale is an essential element of such nondiscriminatory access. Network modifications associated with the implementation of dialing parity should be treated no differently than other LEC network "upgrades" when it comes to recovery of associated costs.

- The Commission should retain its authority to set policy with respect to all facets of numbering administration, but could delegate to the States for action not inconsistent with its numbering administration guidelines matters involving the implementation of new area codes. In funding number administration, care should be taken to avoid a double payment burden on resale carriers.

- The Commission should strictly construe and enforce the Section 251(c)(5) network disclosure requirements, mandating specific types of disclosure and strict timetables for such disclosure.

- The Commission should establish a high burden of proof that must be overcome by LECs claiming an inability to comply with their obligation to afford competitors with access to poles, conduits and rights-of-way.

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The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.1415, hereby submits its Further Comments in response to the Notice of Proposed Rulemaking, FCC 96-182, released by the Commission in the captioned docket on April 19, 1996 (the "Notice"). In these Further Comments, TRA will address the manner in which the Commission proposes to implement those provisions of the Telecommunications Act of 1996 ("'96 Act") which govern number administration and which require local exchange carriers ("LECs") to make available toll and other dialing parity, advance notice of technological changes and access to rights-of-way.[1]

I. The Commission Should Mandate The Expeditious Deployment Of Pervasive, Competitively-Neutral Toll And Other Dialing Parity (¶¶ 202 - 219)

Section 251(b)(3) of the '96 Act requires all LECs to "provide dialing parity to competing providers of telephone exchange service and telephone toll service and . . . to permit

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[1] Pub. L. No. 104-104, 110 Stat. 56, §§ 251(b)(3), 251(b)(4), 251(c)(5), 251(e)(1) (1996) ("'96 Act")

all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays."[2] "Dialing Parity" is defined by the '96 Act as the ability of a person that is not an affiliate of an LEC "to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier)."[3] TRA endorses the manner in which the Commission proposes to implement this statutory mandate.

As the Commission has correctly recognized, the availability of dialing parity "will foster local exchange, long distance and international competition by ensuring that each customer has the freedom to choose among different carriers for different services without the burden of dialing additional access codes or personal identification codes."[4] TRA agrees with the Commission that the dialing parity mandate set forth in the '96 Act is broadly phrased, encompassing all "telecommunications services," and, accordingly, applies to "international, as well as interstate and intrastate, local and toll services."[5] Such an interpretation is consistent with not only the wording of Section 251(b)(3) which recognizes no distinctions among markets, but with the Congressional intent embodied in the '96 Act as a whole to fully open "all

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[2] 47 U.S.C. § 251(b)(3).

[3] 47 U.S.C. § 153(r)(39).

[4] Notice, FCC 96-182 at ¶ 202.

[5] Id. at ¶ 206.

telecommunications markets to competition."[6] Also clear from the wording of Sections 251(b)(3) and 251(d)(1) is the Commission's authority to adopt and impose "uniform, federal rules."[7] For the reasons set forth in Section II(A) of its previously-filed Comments in this proceeding, TRA strongly urges the Commission to fully exercise this authority.

TRA further agrees with the Commission that "presubscription represents the most feasible method of achieving dialing parity in long distance markets consistent with the definition of dialing parity in section 3(15) of the 1996 Act."[8] TRA believes that "presubscription" is the preferred means for customers to "route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation . . ."[9] in all toll markets, including the intraLATA and international, as well as the interLATA, markets. In requiring such pervasive presubscription, TRA urges the Commission to mandate, at an absolute minimum and as an interim measure, a "dual PIC system" in which the customer may select one carrier to transport its intraLATA traffic and one carrier to transport its interLATA traffic. While LECs should be permitted to be listed as a potential carrier of such traffic as they are legally allowed to transport, they should not be afforded any advantage in the PIC-selection process. Ultimately, and as soon as technically feasible, the Commission should mandate a "multi-PIC" or "smart-PIC" presubscription methodology which would allow customers

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[6] S. Conf. Rep. No. 104-230, 104th Cong., 2nd Sess., p. 1 (Jan. 31, 1996) ("Joint Explanatory Statement").

[7] 47 U.S.C. §§ 251(b)(3), 251(d)(1); Notice, FCC 96-182 at ¶ 210.

[8] Notice, FCC 96-182 at ¶ 207.

[9] 47 U.S.C. § 153(r)(39).

to presubscribe to multiple carriers, each one of which would be selected to transport a specified component of traffic. Under such a "multi-PIC" or "smart-PIC" system, customers should, at a minimum, be permitted to designate a different carrier as their preferred provider of intraLATA, interLATA and international traffic, but to the extent that further disaggregation is technically feasible, customers should be allowed to presubscribe to "niche" providers such portions of their traffic as they desire.

With respect to local service, TRA supports the Commission's view that LECs should be required to "permit telephone exchange service customers within a defined local calling area to dial the same number of digits to make a local telephone call, notwithstanding the identity of a customer's or called party's local telephone service provider."[10] The Commission is correct that such an approach is essential to competitive parity among incumbent LECs and competitive local exchange carriers ("CLECs"), which competitive parity can only be achieved "by ensuring that customers of competitive service providers are not required to dial additional access codes or personal identification numbers in order to make local telephone calls."[11]

As to the timing of and the manner in which dialing parity is implemented, TRA submits that the Commission should establish an aggressive implementation schedule, imposing on all LECs, other than the Regional Bell Operating Companies ("RBOCs"), the obligation to deploy at least a "dual-PIC" (and if possible, a "multi-PIC" or "smart-PIC") presubscription system in all of their respective service areas within twelve months following the effective date

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[10] Notice, FCC 96-182 at ¶ 211.

[11] Id.

of the rules promulgated in this proceeding. As established by Section 271(e)(2)(A), the RBOCs should not be permitted to offer "in-region" intrastate, interLATA services until such time as they provide full intraLATA toll dialing parity;[12] the RBOCs, however, should be required to provide interstate, intraLATA toll dialing parity in compliance with the schedule established for all other LECs and intrastate, intraLATA toll dialing parity in early 1999 if they have not initiated "in region" service by that time.[13] No waivers of these requirements should be granted to the RBOCs or any LEC of substantial size.

"Balloting" is clearly the optimal means of affording customers a meaningful opportunity to choose among competitive telecommunications providers. Given their access to all customers through their monopoly operations and the preferred position that they have occupied in the intraLATA toll market until now, the obligation should fall on the incumbent LECs to (i) notify customers of the expanded PIC-selection process, (ii) undertake all necessary consumer education and (iii) conduct the "equal access" balloting. Imposing this obligation on competitive providers would constitute an undue barrier to market entry inconsistent with the spirit of the '96 Act.

TRA fully agrees with the Commission's interpretation of the "nondiscriminatory access" provisions of Section 251(b)(3). Certainly, an incumbent LEC must provide the same access it receives with respect to a service in order to provide nondiscriminatory access to that service. Thus, the Commission is correct that "nondiscriminatory access to telephone numbers"

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[12] 47 U.S.C. § 271(e)(2)(A).

[13] 47 U.S.C. § 271(e)(2)(B).

means that "competing telecommunications providers must be provided access to telephone numbers in the same manner that such numbers are provided to incumbent LECs."[14] And TRA agrees with the Commission that by centralizing and transferring responsibility for the assignment and administration of telephone numbers to the newly-created North American Numbering Plan ("NANP") Administrator, the Commission has in this respect satisfied its obligation under Section 251(e)(1) to "create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis."[15]

"Nondiscriminatory access to . . . operator services" means at least, as the Commission suggests, that regardless of the identity of its local telephone service provider, a customer must be able to connect to a local operator by dialing "0" or "0" plus the desired number.[16] "Operator services" are, as the Commission notes, properly defined as "any automatic or live assistance to a consumer to arrange for billing or completion or both of a telephone call through a method other than" (1) automatic completion with billing to the telephone from which the call originated, or (2) completion through an access code by the consumer, with billing of an account previously established with the telecommunications service provider by the consumer."[17] The duty to provide nondiscriminatory access to operator services clearly requires that these services be made available to non-facilities-based and facilities-based competitors for provision

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[14] Notice, FCC 96-182 at ¶ 215.

[15] 47 U.S.C. § 251(e)(1); Administration of the North American Numbering Plan, 78 Rad.Reg.2d (P&F) 821 (1995), *recon. pending* ("NANP Order")

[16] Notice, FCC 96-182 at ¶ 216.

[17] Id.

to their customers, although this resale requirement is merely a reaffirmation of the resale obligations already imposed on LECs under Sections 251(b)(1) and 251(c)(4).[18] Prompt and strong Commission response to complaints alleging failures by LECs to provide nondiscriminatory access to operator services is required to ensure compliance with this requirement.

TRA agrees with the Commission's interpretation that "nondiscriminatory access to . . . directory assistance, and directory listing" means that the customers of all telecommunications providers "must be able to access each LEC's directory assistance service and obtain a directory listing in the same manner, notwithstanding (1) the identity of a requesting customer's local telephone service provider, or (2) the identity of the telephone service provider for a customer whose directory listing is requested through directory assistance."[19] This duty requires LECs to make directory assistance available to customers of other telecommunications providers in the same manner in which they are accustomed -- *i.e.,* by dialing "411" or, where utilized by the LEC's own customers, by dialing "555-1212." As with operator services, this nondiscrimination obligation also clearly requires that LECs make directory assistance and directory listing services available to non-facilities-based and facilities-based competitors for provision to their customers, although this resale requirement as well is merely a reaffirmation of the resale requirements already imposed on LECs under Sections 251(b)(1) and 251(c)(4). And again as with operator services, prompt and strong Commission response to complaints

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[18] 47 U.S.C. §§ 251(b)(1). 251(c)(4).

[19] Notice, FCC 96-182 at ¶ 217.

alleging failures by LECs to provide nondiscriminatory access to directory assistance and directory listing services is required to ensure compliance with this requirement.

Finally, with respect to the recovery of costs associated with providing dialing parity to competing providers. TRA submits that the network modifications associated with implementing dialing parity should be treated no differently than other LEC network "upgrades" and, therefore, the costs associated with the former should be treated like the costs associated with the latter. To avoid competitive abuses, LECs certainly should not be permitted to levy charges on competitors to recover costs associated with fulfilling their duties under Section 251(b)(3); moreover, given the enormous advantage from which the LECs have benefitted for years in the intraLATA toll market, TRA submits that it may well be appropriate to require the LECs to shoulder the full financial burden of remedying this competitive imbalance.

II. The Commission Should Retain Its Authority Over All Facets Of Numbering Administration (¶¶ 254 - 259)

Section 251(e)(1) of the '96 Act requires the Commission to "create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis."[20] Moreover, Section 251(e)(1) further provides the Commission with "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States," but allows the Commission to delegate to the States all or any portion of this jurisdiction.[21]

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[20] 47 U.S.C. § 251(e)(1).

[21] Id.

TRA agrees with the Commission that its actions in the NANP Order designating a number administrator unaligned with any particular segment of the telecommunications industry and transferring to this entity the functions associated with NANP administration satisfies the Section 251(e)(1) mandate.[22] TRA further agrees with the Commission that it "should retain its authority to set policy with respect to all facets of numbering administration, including area code relief issues in order to ensure the creation of a nationwide, uniform system of numbering that is essential to the efficient delivery of interstate and international telecommunications services and to the development of the robustly competitive telecommunications service market."[23] TRA, however, does not oppose a delegation by the Commission to the States of "matters involving the implementation of new area codes, such as the determination of area code boundaries" provided that actions taken under such delegated authority do not conflict with the Commission's numbering administration guidelines.[24] Moreover, TRA endorses the Commission's conclusions that new area codes must be implemented in a manner that will facilitate competitive entry, not advantage or disadvantage any particular industry segment or group of consumers, and not unduly favor one technology over another.[25] The Commission should, however, immediately preempt any State action which is inconsistent with its numbering administration guidelines.

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[22] Notice, FCC 96-182 at ¶ 252.

[23] Id. at ¶ 254.

[24] Id. at ¶ 256.

[25] Id. at ¶¶ 255 - 256.

In accordance with Section 251(e)(2), the costs associated with the administration of telecommunications numbering must be "borne by all telecommunications carriers on a competitively neutral basis."[26] The Commission proposed in the NANP Order to recover these costs through contributions collected from all telecommunications providers based on their respective gross revenues.[27] The Commission has tentatively concluded that this cost recovery mechanism is competitively neutral and hence not only satisfies the '96 Act's competitive neutrality mandate, but is equitable in its impact.[28] TRA urges the Commission to reconsider this assessment.

Reliance upon gross revenues would, as the Commission concluded in deciding how best to compute regulatory fees, result in a double (or greater) recovery from resale carriers and their customers.[29] With respect to regulatory fees, therefore, the Commission permitted

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[26] 47 U.S.C. § 251(e)(2).

[27] 78 Rad.Reg.2d (P&F) 821 at ¶¶ 94, 99.

[28] Notice, FCC 96-182 at ¶ 259.

[29] Assessment and Collection of Regulatory Fees for Fiscal Year 1995, 10 FCC Rcd. 13512, ¶ 135 (1995). The gross revenues of resale carriers include payments to network providers as to which such network providers would have already contributed a percentage to fund number administration. And given that larger resale carriers often provide "wholesale" services to smaller resellers, a smaller resale carrier's gross revenues could include revenues as to which multiple funding contributions have been made. Facilities-based network providers will likely incorporate amounts contributed to number administration into their charges and pass them through to resale carriers. If resale carriers can incorporate such contributions into their rates, they too will pass their funding contributions through to their customers, along with the contributions passed through to them by their network providers. In the event that multiple levels of resale are involved, three or more contributions could ultimately be incorporated into end-user charges. The more likely scenario, however, is that market forces would prevent resale carriers from incorporating the multiple contributions into their charges and they would hence be compelled to bear the burden of not only their own direct contributions, but the contributions of their multiple providers as well.

initially just interexchange carriers,[30] and ultimately all interstate telephone service providers,[31] to "subtract from their gross interstate revenues . . . any payments made to underlying common carriers for telecommunications facilities or services, including payments for interstate access service, that are resold in the form of interstate service."[32] It did so specifically to "avoid imposing a double payment burden on resellers."[33] TRA urges the Commission to take an equally equitable and reasoned approach here.

III. The Commission Should Require Strict Conformance With The '96 Act's Network Disclosure Requirements (¶¶ 189 - 194)

Section 251(c)(5) of the '96 Act requires each incumbent LEC to "provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks."[34] TRA agrees with the Commission's view that "information necessary for transmission and routing" should include "information in the LEC's possession that affects interconnectors' performance or ability to provide services," that "services" should include "both telecommunications services and

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[30] Id.

[31] Assessment and Collection of Regulatory Fees for Fiscal Year 1995 (Notice of Proposed Rulemaking), MD Docket No. 96-84, FCC 96-153, FY 1996 Guidelines for Regulatory Fee Categories, ¶ 32 (released April 9, 1996).

[32] Id.

[33] Id.

[34] 47 U.S.C. § 251(c)(5).

information services," and that "interoperability" should mean "the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged."[35] And TRA concurs that "incumbent LECs should be required to disclose all information relating to network design and technical standards, and information concerning changes to the network that affect interconnection," identifying in so doing dates, locations, types of changes and potential impacts.[36]

TRA further agrees with the Commission that disclosure should be made through industry forums and in industry publications and that the incumbent LEC should be required to notify the Commission of how and where the information could be readily obtained.[37] The timetable for disclosure suggested by the Commission -- *i.e.,* at the "make/buy" point ("when the carrier decides to make itself or to procure from an unaffiliated entity, any product the design of which affects or relies on the network interface") and at twelve months prior to introduction of the service or network change or if service/network interface introduction can be accomplished in less than twelve months following the make/buy point, the earlier of the make/buy point or six months prior to such introduction.[38]

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[35] Notice, FCC 96-182 at ¶ 189.

[36] Id at ¶ 190.

[37] Id at ¶ 191.

[38] Id at ¶ 192.

IV. The Commission Should Implement Section 251(b)(5) In A Manner That Ensures Meaningful Access To Necessary Rights-Of-Way (¶¶ 220 - 225)

Section 251(b)(4) of the '96 Act imposes on each LEC the duty to "afford access to the poles, conduits, and rights-of-way of such carrier to competing providers of such telecommunications services."[39] TRA urges the Commission to strictly construe this requirement, ensuring that LECs provide access on terms and conditions comparable to those they provide themselves or their affiliates. TRA further urges the Commission to establish a high burden of proof that must be overcome by LECs who claim an inability to comply with these requirements for reasons of "safety, reliability and generally applicable engineering purposes" or by reason of "insufficient capacity." In fulfilling its obligations under Section 251(b)(4) and 252(d)(1), the Commission can and should require fair and reasonable allocation of capacity among entities making use of poles, conduits, and rights-of-way. And the Commission should establish strict requirements regarding the manner and timing of the notice to be given of modifications or alterations of such poles, ducts, conduits and rights-of-way and the allocation of costs associated with such facilities from entities making use thereof.

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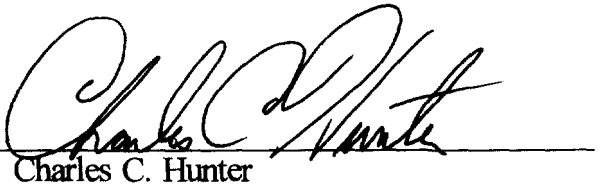
[39] 47 U.S.C. § 251(b)(4).

V. Conclusion

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to adopt rules and policies in this docket consistent with the comments set forth herein.

Respectfully submitted,

TELECOMMUNICATIONS RESELLERS ASSOCIATION

By: 

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